

## REMARKS

Claims 1-26 and 29-129 are pending. In a non-final Office Action dated September 20, 2005, the Examiner (1) rejected Claims 1-26 and 29-129; (2) objected to Claims 25, 56, and 112; and (3) objected to the drawings. Applicant hereby amends Claims 1-3, 5-7, 10-16, 20, 25-26, 38, 42-47, 50, 52-57, 71, 81, 87, 101-102, 104-105, 107, 110, 112-113, 127 and 129; cancels Claims 27, 28 and 51; and traverses. Applicant has also amended the drawings. Pursuant to 37 CFR 1.111, Applicant hereby requests reconsideration.

## DRAWING OBJECTIONS

The Examiner objected to reference characters 520 and 530 as present in Figure 7. Applicant hereby amends Figure 7 to replace 520 and 530 with 720 and 730, respectively. No new matter was added.

## CLAIM OBJECTIONS

The Examiner objected to Claims 25, 56, and 112 for the recitation of the trademark "Kevlar." Applicant hereby amends Claims 25, 56, and 112 to overcome this objection.

The Examiner objected to the absence of Claims 27 and 28. Applicant hereby cancels Claims 27 and 28.

## SECTION 102 REJECTIONS

Claims 1, 2, 10-12, 38, 42, 43, 101-106, 127, and 129 were rejected under 35 U.S.C. 102(b) as being anticipated by Seltzer (U.S. Patent No. 5,462,295). This rejection includes independent Claims 1, 42, and 101. Applicant respectfully traverses.

To support a rejection under Section 102, every limitation of a claim must *identically* appear in a single prior art reference for it to anticipate the claim. *See Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997). There must be *no difference* between the claimed invention and the

reference disclosure. *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Anticipation can be found only when the reference discloses *exactly* what is claimed. *See Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985).

**With regard to Claims 1, 42, and 101, applicant respectfully submits that Seltzer does not teach or fairly suggest an upper support having a first rigidity near the base and a second rigidity above the wearer's ankle lower than the first rigidity. Instead, Seltzer teaches an entire skate with uniform rigidity. "Upper boot 12 and truck assembly 14 are molded as a *single, homogenous, integral piece* to form skate 10 ... the material used to form skate 10 should be a high impact resistant plastic...." (Col. 4, Line 7). Seltzer teaches only two deviations from uniform rigidity, as noted by the Examiner, but neither of these deviations is a first rigidity near the base and a second rigidity above the ankle that is lower than the first rigidity. First, Seltzer teaches a boot made of different plastic than a truck assembly or skate frame. "[I]t is in many cases advantageous to mold the skate chassis or framework from a plastic which is much stiffer than the plastic used for the molding of the skate boot...." (Col. 6, Line 41). Second, Seltzer teaches decreased rigidity in a boot *only horizontally between the slits* 126 and 138. (Col. 9, Line 10). Applicant submits that neither an entire boot made of different plastic than a truck assembly nor a boot with only decreased rigidity horizontally between two slits is a first rigidity near the base and a second rigidity near the point above the ankle that is lower than the first rigidity.**

**With regard to Claim 42, applicant respectfully submits that Seltzer does not teach or fairly suggest an upper support formed by joining a plurality of layers. Instead, Seltzer teaches a skate formed by injection molding. "Also, these materials allow the skate to be manufactured using injection molding." (Col. 4, Line 12). "[I]t is important that plastics used for the boot and the skate chassis or frame are compatible and will flow together when heated." (Col. 6, Line 56). Furthermore, Applicant has amended Claim 42 to further define over the**

references cited. A plurality of layers are set forth to form the boot, with more layers adjacent the base. The prior art cited does not teach or suggest such a combination.

Accordingly, applicant submits that Claims 1, 42, and 101, and their respective dependent claims, are allowable.

Further with regard to the dependent claims, Claim 2 has been amended to clarify that the inserts are "threaded" and "releasably" engage "threaded fasteners". This is clearly not the case with Seltzer where the boot is molded over skate frame tabs.

With regard to Claims 10-12 and 104, Seltzer does not disclose or suggest a base having a shell and a core, or the core extending into a lug. Claims 11 and 105 further require that the lug holds the skate attachment device from translational movement. This is expressly not the case in Seltzer. Claim 12 defines a construction with medial and lateral engagement of a skate mechanism.

Claim 38 is further patentable over the cited art due to its recitation of the varying rigidity over the metatarsal region of the skate.

Claims 43 and 102 further define over the art with the releasable engagement of the inserts.

Claim 106 is not obvious as the art cited does not teach or suggest engagement of a recess in a skate mechanism.

Claim 127 has been amended to recite "generally planar" engagement regions on either side of the arch-shaped region. Similarly Claim 129 includes a planar region adjacent the arch-shaped lower surface.

### SECTION 103 REJECTIONS

#### *Seltzer in view of Baikie*

Claims 3-12, 44-47, and 50 were rejected under 35 U.S.C. 103(a) as being unpatentable over Seltzer in view of Baikie (U.S. Patent No. 3,934,892). Claims 3-12 depend from Claim 1 and

Claims 44-47, 52 depend from Claim 42. Applicant submits that Baikie fails to remedy the failure of Seltzer to teach or fairly suggest each of the elements of Claims 1 and 42.

**In regards to Claims 3-12, 44-47, and 50, Baikie fails to teach or fairly suggest an upper support having a first rigidity near the base and a second rigidity above the wearer's ankle lower than the first rigidity.**

Furthermore, Claim 3 further defines the base with a non-obvious structure. It also references the insert and its position relative to the base structure.

With regard to Claim 4, the references cited do not disclose or suggest a inserts integrated with the base.

Claim 5 has been amended to define that the base is molded around the inserts.

Claim 6 also recites a unique arrangement with the insert held within the base and having the threaded portion accessible while securely holding the insert. Claim 7 requires that the male connector be integrally molded within the base. The prior art does not mold the base around threaded connectors.

Claims 10-12 are patentable over the references for the same reasons discussed above. The Baikie reference does not add teachings in these areas.

**In regards to Claims 44-47 and 50, Baikie fails to teach or fairly suggest an upper support formed by joining a plurality of layers.** Instead, Baikie teaches a skate formed from injection molded plastics. "Each of these members is formed by injection molding a suitable plastic material, such as a polyurethane ... such members being shaped to define a boot portion 43 and a support portion 44 ... The variant of this arrangement shown in FIG. 14 is injection molded in a single piece...." (Col. 3, Line 48).

Accordingly, Applicant respectfully submits that Claims 3-12, 44-47, and 50 are allowable because Baikie fails to remedy the failure of Seltzer to teach or fairly suggest each of the elements of Claims 1 and 42 from which these claims depend.

Claims 44-47 are further patentable due to the recitations of shell and core making up the base and the arrangement of the lug.

Claim 50 further defines over the art with its layers set in a thermoplastic resin. Seltzer teaches a boot that would not be moldable in the manner suggested with composite layers and a thermoplastic resin.

*Seltzer in view of Spier*

The Examiner rejected Claims 13-19, 48, and 49 as being obvious over Seltzer in view of Spier (U.S. Patent No. 3,958,291). Claims 13-19 depend from Claim 1 and Claims 48 and 49 depend from Claim 42. Applicant submits that Spier fails to remedy the failure of Seltzer to teach or fairly suggest each of the elements of Claims 1 and 42.

**In regards to Claims 13-19, 48, and 49, Spier fails to teach or fairly suggest an upper support having a first rigidity near the base and a second rigidity above the wearer's ankle lower than the first rigidity.** Instead, Spier teaches an upper support with uniform, rigid, and non-movable material reinforced with additional similar material: "The method includes the steps of injection molding an outer shell and ... introducing a cellular polymer in viscous form through said conduit into said cavity and curing the same."

**In regards to Claims 48 and 49, Spier fails to teach or fairly suggest an upper support formed by joining a plurality of layers.** Instead, Spier teaches a skate formed by injection molding. "The outer shell construction consists of an injection-molded outer shell 11." (Col. 2, Line 34). "The outer shell 11 is formed first by any suitable molding techniques such as injection molding." (Col. 2, Line 60). "Outer shell portion 11 is formed by placing a form or core in a mold cavity and, by utilizing injection-molding techniques, injecting the polyurethane into the mold cavity to form the outer shell portion 11." (Col. 3, Line 1).

Accordingly, applicant submits that Claims 13-19, 48, and 49 are allowable because Spier fails to remedy the failure of Seltzer to teach or fairly suggest each of the elements of Claims 1 and 42.

Claims 13-19 are further patentable, as amended, as the references cited do not teach the shell and core arrangement set forth. Nor do the references teach the inserts within the shell and core.

*Seltzer in view of Meibock*

The Examiner rejected Claims 20-30, 51-59, and 107-115 as being obvious over Seltzer in view of Meibock (U.S. Patent No. 6,168,172). Claims 20-30 depend from Claim 1, Claims 51-59 depend from Claim 42, and Claims 107-115 depend from Claim 101. Applicant submits that Meibock fails to remedy the failure of Seltzer to teach or fairly suggest each of the limitations of Claims 1, 42, and 101.

**In regards to Claims 20-30, 51-59, and 107-115 Meibock fails to teach or fairly suggest an upper support having a first rigidity near the base and a second rigidity near the point above the wearer's ankle lower than the first rigidity. In regards to Claims 51-59, Meibock fails to teach or fairly suggest an upper support formed by joining a plurality of layers.** Instead, Meibock teaches an upper support being soft and without varying rigidity or formed from a plurality of layers. Meibock states, “[L]eathers [or] fabrics may be used to construct the soft portions of upper 12. These portions include a fore foot portion 24 generally *below the ankle area of the skate and an ankle portion 26 at and above the ankle portion of the skate.*” (Col. 5, Line 52; emphasis added). “[The] upper 12 is constructed of soft, breathable, pliable material of the type commonly used in shoes or hiking boots.” (Col. 5, Line 50).

Accordingly, Applicant submits that Claims 20-26, 29, 30, 51-59, and 107-115 are allowable because Meibock fails to remedy the failure of Seltzer to teach each element of Claims 1, 42, and 101.

Claims 20-26, 29, and 30 are further patentable, as amended, as they further define the arrangement with layers comprising a composite material set with a resin. The cited references do not teach or suggest these combinations. It would not be obvious to use such a structure to create a boot with varying rigidity in the manner claimed. Claims 26, 29, and 30 also further clarify the impact resistant layer arrangement. The prior art does not teach or suggest an impact layer on a composite layer as claimed.

With regard to Claims 52-59 and 107-115, the cited references do not teach or suggest the multi-layers of composite materials as set forth. The multi-layers in Meibock are not composite.

*Seltzer in view of Meibock in view of Lin*

The Examiner rejected Claims 31-40, 60-59, and 116-125 as being obvious over Seltzer in view of Meibock in further view of Lin (U.S. Patent No. 6,775,932). Claims 30, 59, and 89 depend from Claims 1, 42, and 71, respectively. Lin merely teaches an air bag, a casing, and patterns disposed between the air bag and casing. Accordingly, Applicant submits that Lin fails to remedy the failure of Seltzer and Meibock to teach or fairly suggest each of the elements of Claims 1, 42, and 71.

The dependent claims are further patentable for the reasons discussed above. Furthermore, Claim 38 defines over the references with its recitation of a less rigid portion over the metatarsal.

*Seltzer in view of Olson et al.*

The Examiner rejected Claims 41, 70, and 126 as being obvious over Seltzer in view of Olson et al. (US 5,171,033).

These claims are depend from Claims 1, 42, and 101, respectively. They are thus patentable for the reasons discussed above.

*Seltzer in view of Baikie*

The Examiner rejected Claims 71-76, 80, 97, and 128 as being obvious over Seltzer in view of Baikie. Claims 71-76, 80, 97, and 128 depend from Claims 71.

**Applicant submits that Seltzer fails to teach or fairly suggest a boot having a first rigidity near the base and a second rigidity above a wearer's ankle.** Instead, Seltzer teaches an entire skate with uniform rigidity. "Upper boot 12 and truck assembly 14 are molded as a *single, homogenous, integral piece* to form skate 10 ... the material used to form skate 10 should be a high impact resistant plastic...." (Col. 4, Line 7). Seltzer teaches only two deviations from uniform rigidity, as noted by the Examiner, but neither of these deviations is a first rigidity near the base and a second rigidity near the point above the ankle that is lower than the first rigidity. First, Seltzer teaches a boot made of different plastic than a truck assembly. "[I]t is in many cases advantageous to mold the skate chassis or framework from a plastic which is much stiffer than the plastic used for the molding of the skate boot...." (Col. 6, Line 41). Second, Seltzer teaches decreased rigidity in a boot *only between the slits* 126 and 138. (Col. 9, Line 10). Applicant submits that neither an entire boot made of different plastic than a truck assembly nor a boot with only decreased rigidity between two slits is a first rigidity near the base and a second rigidity near the point above the ankle that is lower than the first rigidity.

**Baikie fails to remedy the failure of Seltzer to teach or fairly suggest an upper support having a first rigidity near the base and a second rigidity near the point above the wearer's ankle lower than the first rigidity.**

Accordingly, Applicant respectfully submits that Claims 71-76, 80, 97, and 128 are allowable because Baikie fails to remedy the failure of Seltzer to teach or fairly suggest each of the elements of Claims 71.



*Seltzer in view of Baikie in view of Meibock*

The Examiner rejected Claims 81-89 as being obvious over Seltzer in view of Baikie in view of Meibock. Claims 81-89 depend from Claim 71. Applicant submits that Meibock fails to remedy the failure of Seltzer and Baikie to teach or fairly suggest each element of Claim 71.

**Specifically, Meibock fails to teach or fairly suggest an upper support having a first rigidity near the base and a second rigidity near the point above the wearer's ankle lower than the first rigidity.** Instead, Meibock teaches an upper support being soft and without varying rigidity. Meibock states, "[L]eathers [or] fabrics may be used to construct the soft portions of upper 12. These portions include a fore foot portion 24 generally *below the ankle area of the skate and an ankle portion 26 at and above the ankle portion of the skate.*" (Col. 5, Line 52; emphasis added). "Most of the rest of upper 12 is constructed of soft, breathable, pliable material of the type commonly used in shoes or hiking boots." (Col. 5, Line 50).

Accordingly, Applicant submits that Claims 81-89 are allowable because Meibock fails to remedy the failure of Seltzer and Baikie to teach or fairly suggest each element of Claim 71.

Furthermore, Claim 81 clarifies that a plurality of "composite material layers" form the boot. Meibock does not include such teachings. The claims depending from Claim 81, thus also must be read differently to relate to the composite layers as set forth in Claim 81. These combinations are not taught or suggested by the prior art.

*Seltzer in view of Baikie and Meibock*

The Examiner rejected Claims 90-96, 98, and 99 over Seltzer in view of Baikie, Meibock, and Lin. These claims depend from Claims 89 and 81 and are patentable for the same reasons discussed above.

Furthermore, Claim 92 is patentable due to a lack of teaching in the cited art of any design sublimated on the non-outward-facing side of the layer. The fiber concentration elements in Claims 95 and 96 is not taught or suggested by the cited art.

*Seltzer in view of Baikie in view of Olson*

The Examiner rejected Claim 100 as being obvious over Seltzer in view of Baikie in view of Olson (U.S. Patent No. 5,171,033). Claim 100 depends from Claim 71. Applicant submits that Olson fails to remedy the failure of Seltzer and Baikie to teach or fairly suggest every element of Claim 71. Instead, Olson merely teaches a boot having a plurality of venting apertures for circulation. Accordingly, Applicant submits that Claim 100 is allowable.


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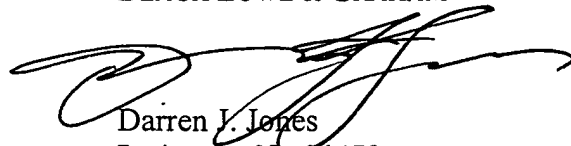
  
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## CONCLUSION

Applicant submits that all claims now pending in this application are in condition for allowance. The Examiner is invited to telephone applicant's attorney if any questions remain.

Respectfully submitted,

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